

## §511.45

## 49 CFR Ch. V (10–1–01 Edition)

by indicating that the written statement be considered the testimony of the witness. In such a case, the written testimony shall be incorporated into the record and shall constitute the testimony of the witness.

(c) *Cross-examination and redirect examination of expert witness.* Cross-examination, redirect examination, and re-cross-examination of an expert witness will proceed in due course based upon the written testimony and any amplifying oral testimony.

(d) *Failure to file and/or to exchange written statement.* Failure to file and/or to exchange the written statement of an expert witness as provided in this section shall deprive the sponsoring party of the use of the expert witness and of the conclusions which that witness would have presented.

### §511.45 In camera materials.

(a) *Definition.* In camera materials are documents, testimony, or other data which by order of the Presiding Officer or the Administrator, as appropriate under this part, are kept confidential and excluded from the public record. Only materials exempt under the Freedom of Information Act may be kept confidential and excluded from the public record. Pursuant to 49 CFR part 512, the Chief Counsel of the NHTSA is responsible for determining whether an alleged confidential business record is exempt from the Freedom of Information Act. The right of the Presiding Officer, the Administrator and reviewing courts to order disclosure of in camera materials is specifically reserved.

(b) *In camera treatment of documents and testimony.* The Presiding Officer or the Administrator, as appropriate under this part, shall have authority, when good cause is found on the record, to order documents or testimony offered in evidence, whether admitted or rejected, to be received and preserved in camera. The order shall specify the length of time for in camera treatment and shall include:

(1) A description of the documents and/or testimony;

(2) The reasons for granting in camera treatment for the specified length of time.

(c) *Access and disclosure to parties.* (1) The Administrator and Presiding Offi-

cer, and their immediate advisory staffs shall have complete access to all in camera materials. All other parties shall also have complete access to all in camera materials, except that these parties may seek access only in accordance with paragraph (c)(2) of this section when:

(i) The in camera materials consist of information obtained by the government from persons not parties to the proceeding; or

(ii) The in camera materials consist of information provided by one of the parties to the proceeding which is confidential as to the other parties to the proceeding.

(2) Any party desiring access to and/or disclosure of the in camera materials specified in paragraph (c)(1) (i) and (ii) of this section for the preparation and presentation of that party's case shall make a motion which sets forth the justification therefor. The Presiding Officer or the Administrator, as appropriate under this part, may grant such motion on the record for substantial good cause shown and shall enter a protective order prohibiting unnecessary disclosure and requiring other necessary safeguards. The Presiding Officer or the Administrator, as appropriate, may examine the in camera materials and excise portions thereof before disclosing the materials to the moving party.

(d) *Segregation of in camera materials.* In camera materials shall be segregated from the public record and protected from public view.

(e) *Public release of in camera materials.* In camera materials constitute a part of the confidential records of the NHTSA and shall not be released to the public until the expiration of in camera treatment.

(f) *Reference to in camera materials.* In the submission of proposed findings, conclusions, briefs, or other documents, all parties shall refrain from disclosing specific details of in camera materials. Such refraining shall not preclude general references to such materials. To the extent that parties consider it necessary to include specific details of in camera materials, the references shall be incorporated into separate proposed findings, briefs, or other documents marked "CONFIDENTIAL,

CONTAINS *IN CAMERA* MATERIAL," which shall be placed *in camera* and become part of the *in camera* record. These documents shall be served only on parties accorded access to the *in camera* materials in accordance with paragraph (c)(2) of this section.

**§ 511.46 Proposed findings, conclusions, and order.**

Within a reasonable time after the closing of the record and receipt of the transcript, all parties and participants may, simultaneously, file post-hearing briefs, including proposed findings of fact, conclusions of law and a proposed order, together with reasons therefore. The Presiding Officer shall establish a date certain for the filing of the briefs, which shall not exceed 45 days after the close of the record except in unusual circumstances. The briefs shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on. Replies shall be filed within fifteen (15) days of the date for the filing of briefs unless otherwise established by the Presiding Officer. The parties and participants may waive either or both submissions.

**§ 511.47 Record.**

(a) *Reporting and transcription.* Hearings shall be recorded and transcribed under the supervision of the Presiding Officer by a reporter appointed by the Administrator. The original transcript shall be a part of the record and the official transcript. Copies of transcripts are available from the reporter at a cost not to exceed the maximum rates fixed by contract between the NHTSA and the reporter.

(b) *Corrections.* Corrections of the official transcript may be made only when they involve errors affecting substance and then only in the manner herein provided. The Presiding Officer may order corrections, either on his or her own motion or on motion of any party. The Presiding Officer shall determine the corrections to be made and so order. Corrections shall be interlineated or otherwise inserted in the official transcript so as not to obliterate the original text.

**§ 511.48 Official docket.**

(a) The official docket in adjudicatory proceedings will be maintained in the Docket Section, Office of the Secretary, Room 4107, 400 Seventh Street SW., Washington, DC 20590, and will be available for inspection during normal working hours (9:00 a.m.–5:00 p.m.) Monday through Friday.

(b) Fees for production or disclosure of records contained in the official docket shall be levied as prescribed in the Department of Transportation's regulations on Public Availability of Information (49 CFR part 7).

[53 FR 15783, May 3, 1988]

**§ 511.49 Fees.**

(a) *Witnesses.* Any person compelled to appear in person in response to a subpoena or notice of oral examination shall be paid at least the same attendance and mileage fees as are paid witnesses in the courts of the United States, in accordance with title 28, U.S.C., section 1821.

(b) *Responsibility.* The fees and mileage referred to in this section shall be paid by the party at whose instance witnesses appear.

**Subpart F—Decision**

**§ 511.51 Initial decision.**

(a) *When filed.* The Presiding Officer shall endeavor to file an Initial Decision with the Administrator within sixty (60) days of the close of the record, the filing of post-hearing briefs, or the filing of replies thereto, whichever is latest.

(b) *Content.* The Initial Decision shall be based upon a consideration of the entire record and it shall be supported by reliable, probative, and substantial evidence. It shall include:

(1) Findings and conclusions, as well as the reasons or bases therefor, upon the material questions of fact, material issues of law, or discretion presented on the record, and should, where practicable, be accompanied by specific page citations to the record and to legal and other materials relied upon.

(2) An appropriate order.

(c) *By whom made.* The Initial Decision shall be made and filed by the Presiding Officer who presided over the